

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN PORTER WILCOX, et al.,

Plaintiffs,

v.

No. CV 14-0308 MV/SMV

SUSANA MARTINEZ, et al.,

Defendants.

**ORDER GRANTING LEAVE TO PROCEED
PURSUANT TO 28 U.S.C. § 1915(b),
AND TO MAKE PAYMENTS OR SHOW CAUSE**

THIS MATTER is before the Court on Plaintiff's Applications to Proceed in District Court Without Prepaying Fees or Costs [Docs. 2, 11], his Motion to Correct [Doc. 10], and his untitled motion to proceed *in forma pauperis* ("IFP") "towards certification of a class action" [Doc. 15]. Because the Court will grant the applications, the filing fee for this civil rights complaint is \$350.00. The untitled motion to proceed IFP [Doc. 15] will be denied as moot.

In his first application, Plaintiff states that he owns a house valued at \$240,000.00 but neglects to identify any debt owed thereon. In the motion to correct and the second application, he states that the loan balance on the house is \$187,237.16 and the house's value is zero. Plaintiff states that he owes monthly payments on the loan, and thus his belated assertion that the house has no value is simply not credible. It appears that he has more than \$50,000 equity in the house, and his expenses exceed his income.

Other financial information in the file indicates that Plaintiff has received certain deposits to his inmate account. *See* 28 U.S.C § 1915(a)(2). Pursuant to § 1915(b)(1), Plaintiff is required

to make installment payments until the full amount of the filing fee is paid. Based on Plaintiff's inmate account information, the Court finds that he owes an initial partial payment of \$6.97 under § 1915(b)(1)(A). The Court will not review the merits of the civil rights complaint unless the initial partial payment is paid or excused. If Plaintiff fails to make a payment by the designated deadline or show cause why such payments should be excused, the civil rights complaint may be dismissed without prejudice without further notice.

IT IS THEREFORE ORDERED that Plaintiff's Applications to Proceed in District Court Without Prepaying Fees or Costs [Docs. 2, 11] and Motion to Correct [Doc. 10] are **GRANTED**; and, **within 30 days** from entry of this order, Plaintiff shall send to the Clerk an initial partial payment **of \$6.97** or show cause why the payment should be excused;

IT IS FURTHER ORDERED that Plaintiff's untitled motion for proceed IFP "towards certification of a class action" [Doc. 15] is **DENIED as moot** because Plaintiff's other IFP motions are granted. The Court makes no ruling on class certification at this time.

IT IS FURTHER ORDERED that the Clerk is directed to provide Plaintiff with two copies of this order, and that Plaintiff make the necessary arrangements to attach one copy of this order to the check in the amount of the initial partial payment;

IT IS FINALLY ORDERED that, after payment of the initial partial fee, Plaintiff shall make monthly payments of twenty per cent (20%) of the preceding month's income credited to his account or show cause why the designated payments should be excused.

IT IS SO ORDERED.

STEPHAN M. VIDMAR
United States Magistrate Judge